

UNITED STATES OF AMERICA
DISTRICT OF MASSACHUSETTS

JOSEPH CHRISTOFORO,
Plaintiff

vs.

JULIO LUPO,
FRANK G. COUSINS, JR., Individually and
in His Capacity as Essex County Sheriff, and
CERTAIN UNKNOWN INDIVIDUALS,
Defendants

CASE NO: 03CV12307 RGS

**DEFENDANT JULIO LUPO'S
MOTION TO COMPEL ANSWERS TO HIS
FIRST SET OF INTERROGATORIES AND
FIRST SET OF REQUEST FOR
PRODUCTION OF DOCUMENTS
DIRECTED TO THE PLAINTIFF**

The Defendant, **Julio Lupo**, in the above entitled matter, pursuant to ***Federal Rules of Civil Procedure, Rule 37(a)(2)(B)***, moves for an order compelling the Plaintiff to Answer the Defendant's First Set of Interrogatories and to produce documents requested from the Plaintiff. As reasons in support of the motion to compel, the Defendant states as follows:

1. The Defendant served the Plaintiff with its First Set of Interrogatories on **August 12, 2004..**
2. The Defendant also served the Plaintiff with its First Set of Request for Production of Documents on Interrogatories on **August 12, 2004.**
3. The Plaintiff has failed to provide responses within the time provided by the ***Federal Rules of Civil Procedure.***
4. On **December 3, 2004**, this office forwarded to the Plaintiff's counsel a written request to discuss the outstanding discovery. (*See Exhibit 1*). Despite this request, the Plaintiff has failed to produce either the requested documents or the answers to interrogatories.
5. As a result of the above failures of the Plaintiff, the Defendant has been hampered in its pre-trial preparation. Further, because of the failure to respond, the Defendant has not rescheduled the previously noticed deposition of the Plaintiff. However, due to the recently revised discovery order, Plaintiff has now re-noticed the deposition of the Plaintiff.
6. Continued failure to respond to these discovery requests (including the inability of the Defendant to submit subsequent discovery requests in response to Plaintiff's anticipated production) will prejudice the Defendant at trial.

WHEREFORE, for the foregoing reasons and pursuant to the authority of the cases cited in the authority Memorandum of Law in Support of this Motion to Compel. The Defendant, **Lupo** respectfully requests that this Honorable Court enter an order compelling the Plaintiff to provide responses to **Lupo** First Set of Interrogatories and First Set Requests for Production of Documents within ten (10) days and award **Lupo** costs and attorneys fees pursuant to ***Federal Rules of Civil Procedure, Rule 37(a)(4)(A)*** or in the alternative, 1) prohibit the Plaintiff from introducing any evidence covered by these Interrogatories or Requests; pursuant to ***Federal Rules of Civil Procedure, Rule 37(b)(2)(A) or (B)*** or 2) enter an order of dismissal and judgment for the Defendant **Lupo**, pursuant to ***Federal Rules of Civil Procedure, Rule 37(b)(2)(C)***.

THE DEFENDANT REQUESTS ORAL ARGUMENT ON THIS MOTION.

Julio Lupo
By Defendant's Attorney

"/s/" Jay Hodapp "
Jay Hodapp, Esquire
Monahan & Padellaro
43 Thorndike Street
Cambridge, MA 02141
(617)494-1188
BBO#551348

Dated: January 20, 2005

CERTIFICATE OF SERVICE

I, Jay Hodapp, Esquire, hereby certify that I have served a copy of the below listed documents, by regular mail, postage paid, on the attorneys of record listed below:

Documents Served:

1. **Defendant's Motion to Compel with Attached Exhibits.**
2. **Memorandum of Law in Support of Defendant's Motion to Compel.**

Sent to:

Plaintiff's Attorney
Edward J. McCormick, III, Esquire
McCormick & Maitland
144 Main Street, P.O. Box 318
Norfolk, MA 02056

Co-Defendant's Attorney
Stephen C. Pfaff, Esquire
Merrick, Louison & Costello, LLP
67 Batterymarch Street
Boston, MA 02110

Subscribed and sworn to under the pains and penalties of perjury this **January 20, 2005**

"/s/ Jay Hodapp"
Jay Hodapp, BBO# 551348

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JOSEPH CHRISTOFORO,
Plaintiff

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**DEFENDANT JULIO LUPO'S
CERTIFICATION PURSUANT TO LOCAL
RULE 7.1(A)(2)**

The Defendant's counsel in this matter has attempted to resolve this issue pursuant to **Local Rule 7.1(A)(2)**. The Plaintiff's Counsel has not responded to this Counsel's request to resolve this discovery issue. (See Copy of Defendant's **Local Rule 7.1(A)(2)** Correspondence at Exhibit 1).

Julio Lupo
By Defendant's Attorney

"/s/ Jay Hodapp"
Jay Hodapp, Esquire
Monahan & Padellaro
43 Thorndike Street
Cambridge, MA 02141
(617)494-1188
BBO#551348

Dated: January 20, 2005

EXHIBIT 1

**Law Offices of
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December 3, 2004

Edward J. McCormick, III
McCormick & Maitland
144 Main Street
P.O. Box 318
Norfolk, MA 02056

By Facsimile: 508-528-2889

Re: **Christoforo, v. Lupo, et al**
Case No: 03-cv-12307 RGS

Dear Atty McCormick:

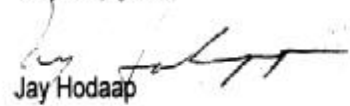
Please be advised that this office represents **Julio Lupo** in the above-entitled matter. This letter is sent in an effort to resolve and narrow a discovery issue pursuant to **Local Rule 7.1(A)(2)**.

On **August 12, 2004**, this office served you with the Defendant's First Set of Interrogatories and the Defendant's First Request for Production of Documents. These discovery requests should have been complied with on or about **September 15, 2004**. As of this date, we have not received these responses. Please advise when this office can expect to receive these responses. Due to this non-compliance, we have held back on scheduling your client's deposition. However, as the fact discovery deadline ends tomorrow, we will be sending you by facsimile, a deposition notice for your client.

Also, be advised that if this office does not hear from you regarding this letter by **December 7, 2004**, we will be obliged to file a motion to compel.

look forward to hearing from you.

Very truly yours,


Jay Hodaap

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CC:


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